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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,567	09/29/2004	Tom Schoenherr	D4700-00391 (3201-376)	9580

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DUANE MORRIS, LLP
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER

HUYNH, KHOA D

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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12/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

CT

Office Action Summary	Application No. 10/509,567	Applicant(s) SCHOENHERR ET AL.	
	Examiner Khoa D. Huynh	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/12/07 & 10/25/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 3 and 6-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

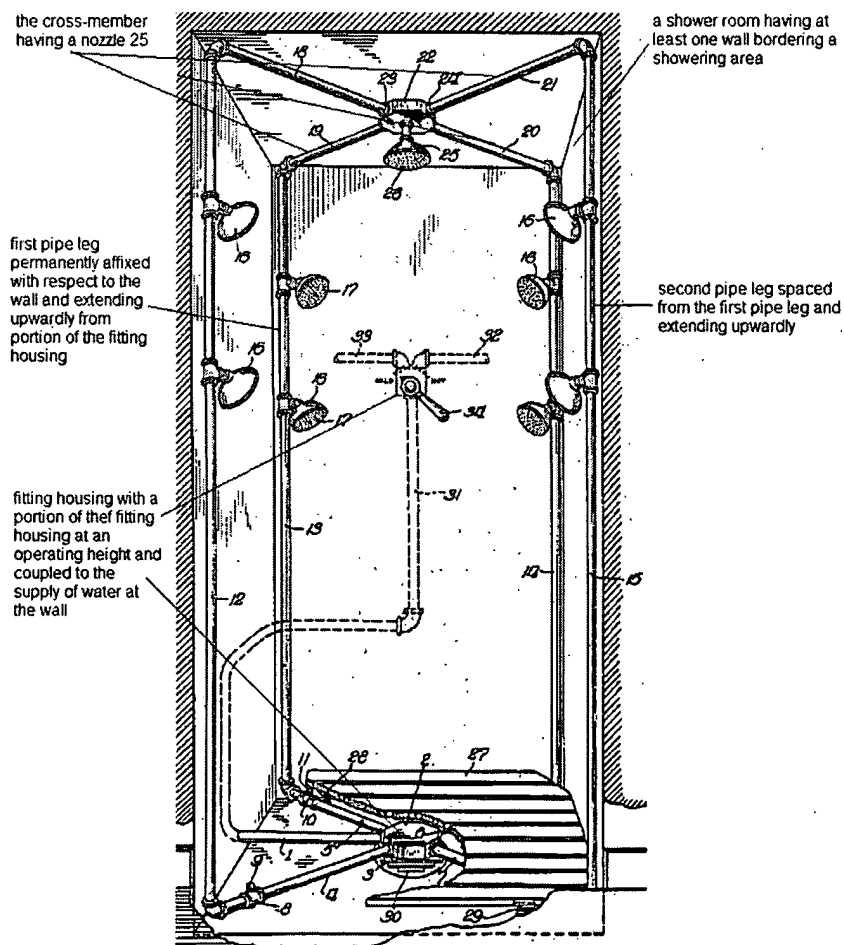
Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 3 and 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaiser (2336402).



Regarding claim 11, the Kaiser reference discloses a shower arrangement (*see above illustrations*). The shower arrangement includes a shower room having at least one wall bordering a shower area and a supply of water (32,33) at the wall, a fitting housing (*see above illustrations*) affixed to the wall at an operating height, wherein the housing is coupled to the supply of water in order to provide water to the shower, a first pipe leg (*see above illustrations*) permanently affixed with respect to the wall and extending upwardly parallel to a plane of the wall, wherein the first pipe leg is coupled directly (at 4) to the fitting housing so as to carry water from the fitting housing to the shower arrangement. A second pipe leg (*see above illustrations*) is spaced from the first pipe leg and extending upwardly, wherein the second pipe leg (*as schematically shown in the above Figure*) is being parallel to the first pipe leg so that both pipe legs lie in a plane, and the second pipe leg is *adapted to be* affixed to a wall. A cross-member (*see above illustrations*) connects top ends of the first and second pipe legs so as to carry water from the fitting housing to the second pipe leg, wherein the first and second pipe legs with the cross-member forming an arced hollow section extending for a distance around the showering area, and wherein the cross-member couples to the fitting housing through the first pipe leg. At least one nozzle (at 25) is coupled to the arced hollow section and directs water from the fitting housing into the showering area.

Regarding claim 3, as schematically shown in Figure 1, the cross-member is guided over the center of the showering area spaced from the wall of the room.

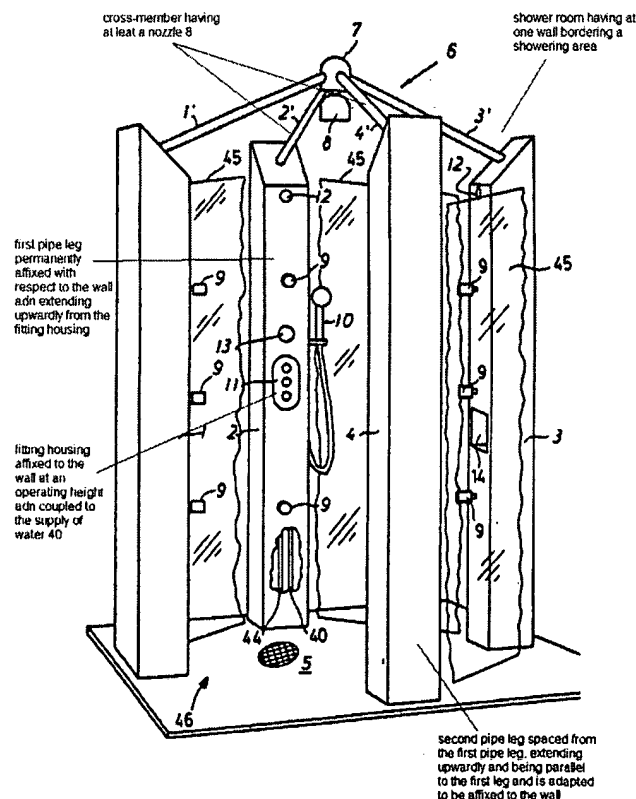
Regarding claim 6, the entire arced hollow section lies in the plane (front view of Figure 1).

Regarding claim 7, the cross member bends out of the plane of at least one of the legs.

Regarding claims 8 and 9, as schematically shown in Figure 1, both legs are straight and are provided with nozzles (at 16)

Regarding claim 10, the arced hollow section provides a water line carrying water from the fitting housing to at least one nozzle (16) coupled to the second of the legs.

3. Claims 3 and 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schinle (5073996).



Regarding claim 11, the Schinle reference discloses a shower arrangement (*see above illustrations*). The shower arrangement includes a shower room having at least one wall bordering a shower area and a supply of water (40) at the wall, a fitting housing (*see above illustrations*) affixed to the wall at an operating height, wherein the housing is coupled to the supply of water in order to provide water to the shower, a first pipe leg (*see above illustrations*) permanently affixed with respect to the wall and extending upwardly parallel to a plane of the wall, wherein the first pipe leg is coupled directly to the fitting housing so as to carry water from the fitting housing to the shower arrangement. A second pipe leg (*see above illustrations*) is spaced from the first pipe leg and extending upwardly, wherein the second pipe leg (*as schematically shown in the above Figure*) is being parallel to the first pipe leg so that both pipe legs lie in a plane, and the second pipe leg is *adapted to be* affixed to a wall. A cross-member (*see above illustrations*) connects top ends of the first and second pipe legs so as to carry water from the fitting housing to the second pipe leg, wherein the first and second pipe legs with the cross-member forming an arced hollow section extending for a distance around the showering area, and wherein the cross-member couples to the fitting housing through the first pipe leg. At least one nozzle (8) is coupled to the arced hollow section and directs water from the fitting housing into the showering area.

Regarding claim 3, as schematically shown in Figure 1, the cross-member is guided over the center of the showering area spaced from the wall of the room.

Regarding claim 6, the entire arced hollow section lies in the plane (front view of Figure 1).

Regarding claim 7, the cross member bends out of the plane of at least one of the legs.

Regarding claims 8 and 9, as schematically shown in Figure 1, both legs are straight and are provided with nozzles (at 9)

Regarding claim 10, the arced hollow section provides a water line carrying water from the fitting housing to at least one nozzle (8) coupled to the second of the legs.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, 6-8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sourdillon (FR 65990).

Regarding claim 11, the Sourdillon reference discloses a shower arrangement (*Fig. 1*). The shower arrangement includes a fitting housing (31) affixed at an operating height, wherein the housing is coupled to a supply of water (12) in order to provide water to the shower, and a first pipe leg (12₁) permanently affixed with respect to the wall and extending upwardly, wherein the first pipe leg is coupled directly to the fitting housing so as to carry water from the

fitting housing to the shower arrangement. A second pipe leg (13₁) is spaced from the first pipe leg and extending upwardly, wherein the second pipe leg (as *schematically shown in Figure 1*) is being parallel to the first pipe leg so that both pipe legs lie in a plane. A cross-member (*which carries elements 1 and 30*) connects top ends of the first and second pipe legs so as to carry water from the fitting housing to the second pipe leg, wherein the first and second pipe legs with the cross-member forming an arced hollow section extending for a distance around the showering area, and wherein the cross-member couples to the fitting housing through the first pipe leg. At least one nozzle (1) is coupled to the arced hollow section and directs water from the fitting housing into the showering area. Even though the Sourdillon reference does not include a shower room as claimed, it, however, would have been obvious to one of ordinary skill in the art to recognize that the Sourdillon shower arrangement is obviously capable of being used in a shower room having at least one wall bordering a showering area in order to provide privacy to a user. In addition, it is well within a general knowledge of one skilled in the shower arrangement art that the fitting housing and the pipe legs should be affixed to the wall to provide a sturdy connection during use and of course, when these pipe legs are properly installed, they obviously are parallel to a plane of the wall.

Regarding claim 3, as schematically shown in Figure 1, the cross-member is guided over the center of the showering area spaced from the wall of the room.

Regarding claim 6, the entire arced hollow section lies in the plane (front view of Figure 1).

Regarding claim 7, the cross member bends out of the plane of at least one of the legs.

Regarding claim 8, as schematically shown in Figure 1, both legs are straight.

Regarding claim 10, the arced hollow section provides a water line carrying water from the fitting housing to at least one nozzle (8) coupled to the second of the legs.

Response to Amendment

6. Applicant's amendment, filed on 10/25/07, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed supra.

Response to Arguments

7. Applicant's arguments filed on 10/25/07 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that Kaiser does not teach a shower room as amended in claim 11. Specifically, applicant asserts that Kaiser lacks "the aspect of the pipe leg emerging from a fitting housing on the wall and extending vertically as claimed." See remarks section. The examiner disagrees.

As stated in the above revised grounds of rejection, Kaiser does disclose a shower arrangement having a fitting housing (*see illustrations*). The housing, as

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schematically shown in Figure 1, is affixed to the wall at an operating height, wherein the housing is coupled to the supply of water in order to provide water to the shower.

The housing is indeed controlling the supply of water, i.e. the pressure, the flow rate and the temperature and distributing the water from the supply to the showerhead. In addition, the shower arrangement includes a first pipe leg permanently affixed with respect to the wall and extending upwardly parallel to a plane of the wall, wherein the first pipe leg is coupled directly to the fitting housing so as to carry water from the fitting housing to the shower arrangement.

Applicant also asserts that "Kaiser's control coupling 31 and junction box 2" cannot be considered a fitting housing. See remarks section. The examiner disagrees. It is noted that *the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art*. In this instance, the term "a fitting housing" does not provide any *structural difference distinguishable* between the claimed invention and the prior art. In other word, as show in the above illustrations, the first pipe leg does *coupled directly to a portion of the fitting housing* and extended upwardly in the plane of the wall. Therefore, Kaiser does teach a fitting housing for controlling the supply of water to the shower arrangement and a first pipe leg coupled directly to the fitting housing as claimed.

Also applicant's arguments with respect to the pending claims have been considered but are moot in view of the new grounds of rejection as discussed supra.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Khoa D. Huynh
Primary Examiner
Art Unit 3751